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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Protest of Forest Service Contract Award]

FILE: B-201097

DATE: April 30, 1981

MATTER OF: Western Ecological Services Company

DLG 06610

DIGEST:

1. Proposal evaluation is responsibility of agency concerned and is questioned only upon clear showing of unreasonableness. Based on review of record, protester has not shown that proposal evaluation was unreasonable.
2. Protest concerning deficiencies in award of prior Forest Service contracts is untimely because filed more than 10 days after basis of protest was known or should have been known. See 4 C.F.R. § 20.2(b)(2) (1980).
3. GAO does not conduct investigations pursuant to its bid protest function for purpose of establishing protester's speculative statements.
4. Altered performance by successful offeror is matter of contract performance not for consideration under GAO Bid Protest Procedures.
5. Proposal evaluators' contract administration experience involving prior contracts awarded to firm which was selected for contract in question does not evidence, in itself, evaluation bias against concerns which have not been awarded similar contracts.

Western Ecological Services Company (Western) protests the rejection of its proposal and the award of a contract to Soil and Land Use Technology, Inc. (SALUT), under request for proposals (RFP) R5-04-80-13

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issued by the United States Department of Agriculture, Forest Service, South Central Zone Contracting Unit, for a soil resource inventory "Order 2" in the Sierra National Forest, California. Western suggests that the award was deficient because its lowest priced proposal was essentially equal in merit to the awardee's proposal; that many errors were made in proposal evaluation; and that precedent and logic dictate that the lowest priced proposal among essentially equal proposals is the most favorable to the Government. As indicated below, we do not consider the protest to have merit.

The RFP established the following provision concerning the evaluation criteria for the contract:

"EVALUATION CRITERIA

<u>FACTOR</u>	<u>MAXIMUM POINTS</u>
1 Qualification and Experience	45
2 Methodology and Schedule for Completion	30
3 Related Specialized Experience	15
4 Cost	10

After evaluation of the technical proposals is completed, the price proposals will be evaluated for those proposals meeting the minimum technical requirements."

Four firms submitted proposals for the work. The Forest Service's general analysis of the received proposals and its specific comments on Western's and SALUT's proposals reads, as follows:

"The proposals of all four firms are considered to be acceptable as is. However, all firms except SALUT, have some discrepancies in the methodology and schedule portions

of their proposals (described below). These items are not serious enough to warrant further clarification or modification because all firms are basically qualified, and have performed this type of work in the past. The value of clarifying information would not offset the need for timely awarding of the contract due to the limited field season and obligation period remaining.

"The firms are listed below in order of their proposal ratings.

<u>"FIRM</u>	<u>COMMENTS</u>
SALUT	Well rounded proposal. Methodology is well described and schedule is logical.
WESTERN	Least experienced of firms in 2nd Order [soil resource inventories]. Methodology and schedule is well written, but not enough time is shown for field mapping (tasks 7, 8, & 9). * * *

Based on the above analysis, the following technical scores and cost scores were assigned the two proposals:

	<u>Technical Points</u>	<u>Price</u>	<u>Total Points</u>
SALUT	81	(7.4) \$29,560	88.4
Western	72	(10.0) 22,030	82.0

Considering the assigned scores, the Forest Service awarded a contract for the work to SALUT.

Western disagrees with the contracting agency's evaluation of the proposals. Specifically, the company argues that it should have received a higher score for its experience in "Order 2" soil inventories. Western also argues that the Forest Service's evaluation of SALUT's experience was exaggerated.

We have consistently held that proposal evaluation is the responsibility of the agency concerned and is questioned by our Office only upon a clear showing of unreasonableness. See RAI Research Corporation, B-184315, February 13, 1976, 76-1 CPD 99. A proposal evaluation will not be regarded as unreasonable merely because there exists some disagreement between the procuring agency and the offeror. For an evaluation to be deemed unreasonable, it must clearly appear from the record that there is no rational basis for the agency's determination. Joanell Laboratories, Inc., 56 Comp. Gen. 291 (1977), 77-1 CPD 51. Further, the protester has the burden of affirmatively proving its case. C.L. Systems, Inc., B-197123, June 30, 1980, 80-1 CPD 448.

As noted above, the RFP stated that "qualification and experience" would be heavily weighed in evaluating proposals, and that cost would be scored a maximum of 10 points. However, Western states that its proposal was submitted in the belief that past awards had been made to the lowest priced offeror and that, therefore, it designed its proposal to reflect a low cost to the Government at the expense of non-cost factors. This proposal strategy was erroneous because proposal evaluators must strictly adhere to the emphasis given the evaluation criteria set forth in the solicitation. To the extent Western proposed to do the work based on its erroneous view that cost considerations would be worth more than a maximum of 10 points, we reject this part of the protest. In any event, we conclude that Western only disputes the Forest Service's evaluation of its experience, but has not shown that the agency's evaluation lacked any rational foundation. In this

regard, we must reject as speculative Western's allegation that "experience gained from Order 1 or detailed soil surveys is easily transferable and is relevant to Order 2 soil survey experience."

Besides its allegation that the evaluation team improperly evaluated its "Order 2" soil survey experience, Western also alleges that errors of fact were made in evaluating its other soil testing experience. A review of the record indicates that Western did not submit the same detailed information in its proposal that it submits to us; for example, Western states that only a "partial listing of relevant experience was presented in [its] proposal." Nevertheless, the evaluators may only evaluate the proposals as submitted. Moreover, based on our review of the record, we must conclude that Western has not shown that SALUT's experience was exaggerated. In the circumstances, we cannot question the selection of SALUT under the formula scheme which assigned only 10 points for cost.

Western also makes a number of allegations about deficiencies in the awards of prior Forest Service contracts and asks for an investigation of present award procedures. Western also alleges that successful offerors have submitted proposals stating experienced employees will be doing work under the contract, but, instead, have substituted less experienced employees during contract performance in a practice to increase profits.

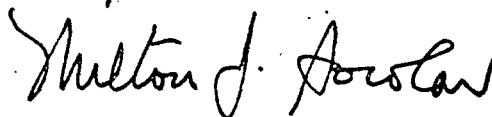
Protests involving issues other than solicitation defects must be filed 10 days after the basis for protest is known or should have been known. 4 C.F.R. § 20.2(b)(2) (1980). Western's protest pertaining to past contracts is therefore untimely filed. Likewise, GAO does not conduct investigations pursuant to its bid protest function for the purpose of establishing a protester's speculative statements. Robinson Industries, Inc., B-194157, January 8, 1980, 80-1 CPD 20. As to the protester's allegations of altered performance by successful offerors, that allegation involves contract performance and is not for consideration under our Bid Protest Procedures. Potomac

Documentation and Design, Inc., B-197347, B-197349,
September 19, 1980, 80-2 CPD 211.

Western also alleges that two proposal evaluators were biased against Western's proposal because they had taken part in the administration of prior contracts awarded to SALUT. However, Western also states that the "original Technical Evaluation Team acted in good faith," although it believes "subsequent responses by the Forest Service are best characterized as attempts to justify the original award determination."

We must reject the allegation as unproven since we do not view the evaluators' contract administration experience as evidence, in itself, of evaluation bias against firms which have not been awarded similar contracts.

Accordingly, the protest is denied.



Acting Comptroller General
of the United States